



Costs Decision

Site visit made on 28 September 2009

by **Chris Hoult BA BPhil MRTPI MIQ**

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
22 October 2009

Costs application in relation to Appeal Ref: APP/B3410/C/09/2104868 389 Rosliston Road, Stapenhill, Burton-upon-Trent, Staffordshire, DE15 9RJ

- The application is made under the Town and Country Planning Act 1990, sections 174, 175(7) and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr J P O'Toole for a full award of costs against East Staffordshire Borough Council.
- The appeal was against an enforcement notice alleging the erection of a timber shed without planning permission.

Summary of Decision: The application fails and no award of costs is made.

The Submissions for the Appellant

1. These are set out in a statement attached to a letter/e-mail dated 27 July 2009. In summary, they are that, given the extent to which the height of the shed exceeds the relevant limitations in respect of permitted development rights, the enforcement notice should not have been issued. The Council's objections were not based on objective evidence and there were no third party objections. The officers' report on which the decision to take action was based had various shortcomings. The Council has been unable to demonstrate how the breach of planning control would unacceptably affect public amenity containing, as it does, subjective judgments about its impact on the street scene. Time and money has been spent in pursuit of an unnecessary appeal.

The Response by the Council

2. This is set out in a letter dated 29 July 2009. In summary, the Council refers to the amount of effort expended to try to resolve matters before formal action was taken. The Council served the notice because the building paid little regard to its surroundings and had a harmful effect on the street scene, in conflict with the relevant development plan policies. Given this, the Council could hardly have considered anything other than its removal. The Council has behaved entirely reasonably.

Reasons

3. Circular 03/2009 advises that costs will normally be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily. I deal firstly with the question of the "subjectivity" of the Council's judgment in coming to its view that the shed was unacceptable. In my view, the appellant's claims on this matter are without foundation. It is the responsibility of planning officers to exercise judgment on
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the planning merits of proposals which are put before them. This plainly applies to development which has been carried out without planning permission. In this case, the officers exercised judgments on the planning merits of the shed as built by way of assessing them against the relevant criteria in the local plan policies, as I have done in my appeal decision.

4. The lack of any third party objection does not on its own indicate lack of harm just as its presence does not of itself demonstrate that harm arises. Though brief, the comments in the officers' report and the Council's appeal statement adequately assess and identify the harm arising. The evidence indicates that the Council reasonably sought to resolve matters informally before resorting to enforcement action and that it engaged in further dialogue with the appellant's representative after the notice was served. It cannot be held responsible for the appellant's lack of professional representation until after this point.
5. With regard to the differences between the shed as built and the fall-back position offered by permitted development rights, these appear to have been the subject of discussions between the parties, where the option of reducing the height of the shed was canvassed. I have trouble accepting the appellant's suggestion that the Council could have simply have let the matter of its unlawfulness lie. That seems to me to promote an irresponsible approach to planning control. The Council plainly viewed the shed as unacceptable, irrespective of whether a shed of similar dimensions but reduced height could be built as permitted development. I accorded weight to the fall-back position in my appeal decision on the basis of a view along these lines.
6. I therefore see no reason to conclude that the Council's actions were either unreasonable or unnecessary, or that enforcement action could have been avoided. Accordingly, I conclude that the time and expense involved in pursuing an appeal against it were not unnecessarily incurred. For these reasons, unreasonable actions resulting in unnecessary or wasted expense, as described in Circular 03/2009, have not been demonstrated and I therefore conclude that an award of costs is not justified.

Formal Decision

7. I refuse the application for an award of costs.

C M Hoult

INSPECTOR